



WILLIAM T FUJIOKA  
Chief Executive Officer

## County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 713, Los Angeles, California 90012  
(213) 974-1101  
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December 9, 2008

Board of Supervisors  
GLORIA MOLINA  
First District

MARK RIDLEY-THOMAS  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**DEPARTMENT OF PUBLIC WORKS:  
LAC+USC MEDICAL CENTER REPLACEMENT PROJECT  
APPROVAL OF THREE INDIVIDUAL CONSTRUCTION CHANGE ORDERS AND A  
FINAL CHANGE ORDER AND PROJECT CLOSE OUT AGREEMENT FOR FINAL  
SETTLEMENT OF ALL DISPUTED ISSUES  
MCCARTHY/CLARK/HUNT, A JOINT VENTURE; CONTRACT PW-12641  
SPECS. 6550; C.P. 70787  
(FIRST DISTRICT) (4 VOTES)**

**SUBJECT**

The recommended action is to resolve all remaining construction and contract issues with McCarthy/Clark/Hunt, the general contractor for the LAC+USC Medical Center Replacement project.

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve and authorize the Director of Public Works or her designee to execute a change order with McCarthy/Clark/Hunt, a Joint Venture, for various changes in the Outpatient Building to obtain final air balance for a \$300,000 not-to-exceed fee.
2. Approve and authorize the Director of Public Works or her designee to execute a change order with McCarthy/Clark/Hunt, a Joint Venture, for revisions to the chiller enclosure in the Central Plant for a \$217,000 not-to-exceed fee.

*"To Enrich Lives Through Effective And Caring Service"*

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3. Approve and authorize the Director of Public Works or her designee to execute a change order with McCarthy/Clark/Hunt, a Joint Venture, for Central Plant utility bills for a \$426,518 not-to-exceed fee.
4. Approve and authorize the Director of Public Works or her designee to execute a final change order and project close out agreement with McCarthy/Clark/Hunt, a Joint Venture, to fully and finally resolve all outstanding change order requests and other disputed issues on the part of McCarthy/Clark/Hunt relating to the project, in the amount of \$27,362,000.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

**Reason and Scope – Recommendation 1:**

Unforeseen condition	<input type="checkbox"/>	Regulatory agency requirement	<input type="checkbox"/>
Drawing coordination	<input type="checkbox"/>	Previously approved scope change	<input type="checkbox"/>
Errors and omissions	<input checked="" type="checkbox"/>		

The original values for air distribution on the contract documents did not allow the contractor to achieve final air balance in the Outpatient building. Air quantities were redistributed and sequences of operation were modified in a joint effort between the contractors and engineers to obtain a final certified air balance report. This scope of work took place over a four month time span involving multiple subcontractors.

The total cost of the work has been negotiated between the Department of Public Works (Public Works) and the contractor for a \$300,000 not-to-exceed fee with no delay to the contractual completion date. This work is considered to be within the scope of the project.

**Reason and Scope – Recommendation 2:**

Unforeseen condition	<input type="checkbox"/>	Regulatory agency requirement	<input type="checkbox"/>
Drawing coordination	<input checked="" type="checkbox"/>	Previously approved scope change	<input type="checkbox"/>
Errors and omissions	<input checked="" type="checkbox"/>		

Due to the complexity of the mechanical and electrical systems installed within the chiller room, the ceiling under the pipe enclosure had to be raised to provide adequate and code-compliant headroom clearances. Code dictates a one-hour enclosure around pipes traversing through a room, and not serving that room. The originally designed enclosure

for the large steam piping passing through the chiller room between boiler and plumbing rooms was changed to accommodate the complexity of the different trades involved in installing the mechanical and electrical systems as well as the upgraded seismic bracing over the chillers. The ceiling height was raised by using the thinner, more expensive ceiling system in lieu of the traditional double layers of drywall and sprayed fire proofing on the exposed tube steel supports.

The total cost of the work has been negotiated between Public Works and the contractor for a \$217,000 not-to-exceed fee with no delay to the project completion date. This work is considered to be within the scope of the project.

**Reason and Scope – Recommendation 3:**

Unforeseen condition	<input type="checkbox"/>	Regulatory agency requirement	<input type="checkbox"/>
Drawing coordination	<input type="checkbox"/>	Previously approved scope change	<input checked="" type="checkbox"/>
Errors and omissions	<input type="checkbox"/>		

Approval of the recommended action will reimburse the contractor for all public utility costs from the time of Central Plant occupancy, August 9, 2007, to the time when all accounts were transferred to the Department of Health Services, January 1, 2008. In October 2005, as part of an interim resolution of claims on the project, the County agreed to assume responsibility for utility costs associated with the early turnover of the Outpatient building and Central Plant.

The total cost of the utilities has been negotiated between Public Works and the contractor for a \$426,518.

**Reason and Scope – Recommendation 4**

**Background**

From the outset of the LAC+USC Medical Center Replacement project construction phase, it has been Public Works' goal to establish an open line of communication with the general contractor, McCarthy/Clark/Hunt (MCH), in order to resolve contentious contract issues in an expeditious and collaborative manner with a focus on early containment of cost impacts to either party. In November 2007, Public Works scheduled a series of executive level meetings with MCH in order to negotiate and rapidly close any disputed construction issues to avoid costly claim litigation with the contractor, and foster a collaborative partnership for the balance of the construction.

As a result of this negotiation process, Public Works and MCH have reached an agreement, subject to your Board's approval, to a final change order and project close out agreement in the amount of \$27,362,000. Public Works had reviewed various claims and change order requests that totaled approximately \$44,520,216. In most cases, these requests had some degree of validity, but many were not sufficiently substantiated to the value requested. After extensive negotiations between MCH and Public Works, the County and MCH have agreed to settle all of MCH's claims for the amount of \$27,362,000, which Public Works believes to be a fair and appropriate amount to resolve these claims.

The proposed change order fully resolves all of the disputed construction and contract issues for the duration of the construction and includes, but is not limited to, the following terms and conditions outlined in three main components.

The first component includes disputed issues that the general contractor, MCH, had directly with the County and is in the amount of \$10,628,266. These were primarily issues related to delays that MCH believes were caused by the County, including the cost of overtime worked to mitigate certain alleged delay damages. It also includes costs related to repairing portions of completed work that were damaged when subcontractors had to return to a completed area to do work related to change orders, including items such as touch up painting, repairing scratched floors, or broken ceiling tiles.

The second component includes claims and disputes arising out of the work of all of MCH's subcontractors and is in the amount of \$16,733,734. The change order specially mentions 25 subcontractors and two second tier subcontractors who had specific or potential claims or disputed change orders, but it fully encompasses all of the work performed by all subcontractors and the materials supplied by all material suppliers on the project without exception.

The third component is a full and final release and waive of claims against the County by MCH on the project, including, but not limited to claims for extra compensation of any kind, delay, disruption, acceleration and home and field office overhead. Subject to your Board's concurrence, this final change order and project close out agreement would close out the construction contract and result in a waiver and release of the County from any further claims associated with this project by MCH.

As part of the final change order and project close out agreement, the County also agrees to waive any delay claims against MCH, including claims for liquidated damages.

The proposed final change order and project close out agreement is in addition to the three individual change orders described above. The amount of each of the three individual change orders exceeds the Director of Public Works' delegated authority.

**FISCAL IMPACT/FINANCING**

The three individual change orders and the final change order and project close out agreement are within the scope of the project and within the Board approved project budget of \$924,713,218. Sufficient appropriation is available in the 2008-09 Capital Projects/Refurbishments Final Budget - LAC+USC Medical Center Replacement project (C.P. 70787) to fund the recommended action.

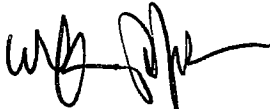
**FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The final change order and project close out agreement has been approved as to form by County Counsel.

**CONCLUSION**

Upon approval of the recommendations, please forward an adopted copy of the Board letter to my office.

Respectfully submitted,



WILLIAM T FUJIOKA  
Chief Executive Officer

WTF:DL:JSE  
DJT:DKM:mc

Attachment

c: County Counsel  
Department of Health Services  
Department of Public Works (Project Management Division I)

McCarthy/Clark/Hunt, a Joint Venture  
1849 Marengo Street  
Los Angeles, CA 90033

LAC+USC MEDICAL CENTER REPLACEMENT PROJECT  
ALL BUILDINGS

Specs No. 6550  
C.P. 70787

Date: December 2, 2008

PUBLIC WORKS DEPARTMENT CHANGE ORDER 02199

TO CONTRACT PW12641

**FINAL CHANGE ORDER AND PROJECT CLOSE-OUT AGREEMENT AND RELEASE**

In consideration of the negotiations between the County of Los Angeles ("Owner" or "County") and McCarthy/Clark/Hunt, a Joint Venture ("MCH" or "Contractor") (each a "Party" and collectively the "Parties"), in connection with the LAC+USC Medical Center Replacement Project ("Project"), located in Los Angeles, California, this Final Change Order and Project Close-Out Agreement and Release (hereinafter "Final Change Order") is agreed and entered into by and between the County and MCH and will serve as a full and final resolution of all of MCH's claims relating to the Project and Contract PW-12461 ("Contract"), including, but not limited to, those matters described in Enclosure A "MCH General Conditions" and Enclosure B "MCH Subcontractor Claimant List" (Enclosure A and Enclosure B are attached hereto and incorporated by reference herein), subject to the specific terms and conditions set forth below:

**ENCLOSURE A:**

With the exception of "Enclosure B Requests," as referenced below, the Parties acknowledge and agree that Enclosure A broadly encompasses and includes all of MCH's claims, demands, and requests for compensation of any kind relating to or arising out of the Project and the Contract, including, but not limited to the nine (9) specific issues or items referenced in Enclosure A, and that all such claims, demands, and requests are hereinafter collectively referred to as "Enclosure A Requests".

As part of the global resolution being achieved by this Final Change Order, the aggregate value assigned to the resolution of Enclosure A Requests is \$14,030,621.

**ENCLOSURE B:**

The Parties acknowledge and agree that Enclosure B broadly encompasses and includes all of MCH's claims, demands, and requests for compensation of any kind relating to or arising out of the work performed by MCH's subcontractors of any tier or materials provided by MCH's suppliers of any tier on the Project, including, but not limited to, the twenty-seven (27) firms specifically listed in Enclosure B, and that all such claims, demands and requests are hereinafter collectively referred to as "Enclosure B Requests".

As part of the global resolution being achieved by this Final Change Order, the aggregate value assigned to the resolution of Enclosure B Requests is \$13,331,379.

It is understood and agreed that this Final Change Order resolves and constitutes a waiver and release of all of MCH's claims, demands, and requests for compensation of any kind relating to the Project and Contract through final completion and final acceptance of the Project by the County, which for purposes of this Final Change Order includes, but is not limited to, final completion and final acceptance of any and all punch-list work.

Now, therefore, in consideration of the foregoing and the mutual covenants and promises contained herein, the Parties further agree as follows:

**TERMS AND CONDITIONS:**

1. Payment by County to MCH

Upon the mutual execution of this Final Change Order and subsequent requisition by MCH, Owner agrees to pay MCH a gross amount of \$27,362,000 in full and final resolution of any claims MCH has now or may have in the future in connection with the Project and Contract, including, but not limited to, Enclosure A Requests and Enclosure B Requests.

The Parties agree and acknowledge that the final Contract amount, inclusive of this Final Change Order and all previous and concurrent change orders, is \$641,807,914, and that payment of any outstanding amounts, including any contract balance or retention, shall be subject to the terms and conditions of the Contract, including as previously amended and as amended by this Final Change Order, and subject to and in accordance with applicable law.

2. Waivers/Release of Owner by MCH and MCH Indemnification of Owner; and Owner's Waiver/Release of Delay Claims Against MCH

a. MCH on behalf of itself, its owners, partners, joint venturers, insurers, agents, representatives, members, managers, principals, subsidiaries, affiliates, subcontractors of any tier, suppliers of any tier, predecessors, successors, assigns, employees, officers, directors, and attorneys hereby irrevocably and forever releases, waives and relinquishes any and all actions, demands, damages, claims, causes of action, rights, remedies, liabilities, and requests for compensation of any kind, whether known or unknown, suspected or unsuspected, which it now has, owns or holds, or at any time in the past had, owned or held, or may in the future have, own or hold through the final completion and final acceptance of the Project by the County, including, but not limited to, any claims for extra work, delay, acceleration, disruption, impact, cumulative impact, ripple effects, loss of productivity, and extended home and field office overhead and increased costs of every kind and nature (hereinafter collectively referred to in this Final Change Order as "Claims"), against Owner and its special districts, the Board of Supervisors, individual members of the Board of Supervisors, its directors, officers, administrators, employees, architects, engineers, consultants, representatives, and project managers arising out of or relating in any way to the Project or the Contract, including, without limitation, relating to the Enclosure A Requests, the Enclosure B Requests, and relating in any way to changes, claims or requests that are or were encompassed within the scope of any change orders that have been previously executed by Owner and MCH, or any change orders that may be concurrently executed by Owner and MCH in connection with the Project and Contract.

b. With respect to any "pass-through" Claims, including, but not limited to, Claims seeking indemnity, that MCH might have now or in the future against Owner, and its special districts, the Board of Supervisors, individual members of the Board of Supervisors, its directors, officers, administrators, employees, architects, engineers, consultants, representatives, and project managers in connection with or relating to Claims against MCH brought by MCH's subcontractors of any tier or suppliers of any tier arising out of or relating to the Project or Contract, MCH waives, releases, and relinquishes any such pass-through Claims against Owner and its special districts, the Board of Supervisors, individual members of the Board of Supervisors, its directors, officers, employees, architects, engineers, consultants, representatives, and project managers, and MCH further agrees to defend, indemnify and hold harmless the Owner and its special districts, the Board of Supervisors, individual members of the Board of Supervisors, its directors, officers, administrators, employees, architects, engineers, consultants, representatives and project managers from and against such claims in the event that

MCH's subcontractors of any tier or suppliers of any tier, attempt to bring any such Claims against MCH or the Owner or both.

c. MCH hereby irrevocably and forever releases, waives, and relinquishes the Owner and its special districts, the Board of Supervisors, individual members of the Board of Supervisors, its directors, officers, administrators, employees, architects, engineers, consultants, representatives, and project managers from and against any and all Claims associated with any work performed by MCH and/or MCH's subcontractors of any tier and any materials provided by MCH's suppliers of any tier, related in any way to sewer backup occurrences on the site in or adjacent to the Outpatient Building and the northwest portion of the site, and MCH agrees to defend, indemnify and hold harmless the Owner from and against any such Claims, including, but not limited to, any Claims by MCH's subcontractors, MCH's insurance carriers and MCH's subcontractors' insurance carriers for subrogation or indemnity.

d. This Final Change Order represents a full, and final, settlement and general release of all of MCH's Claims against County related to the Project and Contract. MCH acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

This is a general release by MCH and MCH hereby waives and relinquishes all rights and benefits which it has or may have under Section 1542 of the California Civil Code concerning the Project and Contract.

e. The Owner, on behalf of itself, the Board of Supervisors, Chief Executive Officer, administrators, officers, directors, and attorneys hereby irrevocably and forever releases, waives and relinquishes any and all actions, demands, damages, claims, causes of action, rights, remedies, and liabilities relating to delay in the completion of the Project, including, but not limited to, any claims for liquidated damages against MCH.

f. MCH hereby warrants and represents that no other person has any interest in the matters released herein and that it has not made any claim or assignment or assigned a right of subrogation to any third party over the rights or interests that MCH has pursuant to this Final Change Order.

3. **Warranties:**

All warranty dates for all packages will be as outlined in Enclosure C.

4. Owner and MCH acknowledge and agree that the issues set forth in this Final Change Order have been resolved pursuant to good faith negotiations, that each of the Parties has cooperated and participated in the drafting of this Final Change Order, and that this Final Change Order will not be construed or interpreted in favor of or against either of the Parties by virtue of the identity of the preparer.

5. It is understood and agreed that this Final Change Order is made in compromise of disputed claims and that this Final Change Order will not be construed as an admission or concession of liability by either Party of any contractual entitlement, liability or wrongdoing.

6. Choice of law for the interpretation, enforcement and governance of this Final Change Order shall be as stated in the Contract. In the event that one or more of the provisions, or portions thereof, of this Final Change Order is determined to be illegal or unenforceable, it is understood and agreed that the remainder of



December 2, 2008

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this Final Change Order will not be affected thereby and each remaining provision or portion thereof will continue to be valid and effective and will be enforceable to the fullest extent permitted by law.

7. This Final Change Order shall be binding upon and inure to the benefit of each Party's respective successors and assigns, if any.

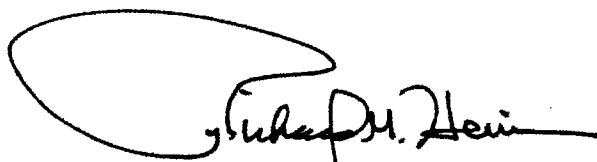
8. Each Party hereto acknowledges that it has been represented by legal counsel in the negotiation and preparation of this Final Change Order and that the rights, remedies, waivers, releases, obligations and other terms and conditions of this Final Change Order have been fully explained to and understood by each Party.

9. This Final Change Order constitutes the entire agreement and understanding among the Parties concerning the subject matter of the Final Change Order, and supersedes all prior and contemporaneous agreements, statements, understandings, terms, negotiations, and representations, whether oral or written, concerning the matters covered by this Final Change Order.

GAIL FARBER  
Director of Public Works

\_\_\_\_\_  
JACOB WILLIAMS  
Department of Public Works

\_\_\_\_\_  
Executed

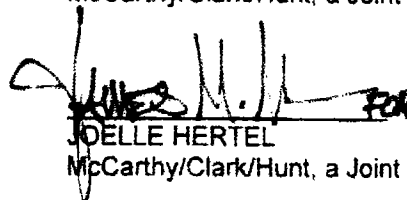
  
\_\_\_\_\_  
RICHARD HEIM  
McCarthy/Clark/Hunt, a Joint Venture

\_\_\_\_\_  
Executed

11/26/08

\_\_\_\_\_  
KAMEL YOUSSEF  
Department of Public Works

\_\_\_\_\_  
Executed

  
\_\_\_\_\_  
JOELLE HERTEL  
McCarthy/Clark/Hunt, a Joint Venture

\_\_\_\_\_  
Executed

11/26/08

KY:pdw:js

P:\MCH CO 02119 and Release 11-25-08 DOC

Enc. (2)

**ENCLOSURE A**

**MCH GENERAL CONDITIONS**

ITEM	DESCRIPTION	AMOUNT
1	Additional Steel in Shaft Bottoms	\$ 100,000
2	Overtime work Related to Mechanical Subcontractor	\$ 300,000
3	Remediation of Sewer Backup	\$ 200,000
4	Overtime Work for Project Completion	\$ 1,000,000
5	Extended Insurance Premiums	\$ 900,000
6	Extended General Conditions	\$ 7,653,266
7	Trade Damage	\$ 975,000
8	Air Balance issue	\$ 2,439,684
9	ADA Showers Corrections	\$ 462,671
	<b>TOTAL:</b>	<b>\$ 14,030,621</b>

**ENCLOSURE B**

**MCH SUBCONTRACTOR CLAIMANT LIST**

1. Sasco
2. MCM
3. JCI
  - a. Net Versant
  - b. Comet
4. Isec
5. Martin Integrated
6. PCI
7. Berger
8. Redmond
9. Mid Canada
10. Hassen
11. Design Hardware
12. Best Roofing
13. CMF
14. Northstar
15. American Air Balance
16. Conco
17. Morly
18. Washington Iron Works
19. Nelco
20. Corradini
21. Fontana
22. Apex
23. Alcala
24. Fujitec
25. Vomar

**ENCLOSURE C**

**WARRANTY SUMMARY**

**OUTPATIENT BUILDING**

- Complete building warranty period with the exception of any prior written agreements or extended warranties begins January 1, 2008.

**CENTRAL PLANT**

- Complete building warranty period with the exception of any prior written agreements or extended warranties begins December 17, 2007.

**DIAGNOSTIC & TREATMENT BUILDING**

- Complete building warranty period with the exception of any prior written agreements or extended warranties begins August 5, 2008

**INPATIENT BUILDING**

- Complete building warranty period with the exception of any prior written agreements or extended warranties begins August 5, 2008.

**FINAL SITE**

- Complete warranty period with the exception of any prior written agreements or extended warranties begins August 5, 2008.